2011 DRAFTING REQUEST

Bill

Received: **02/03/2011**

Received By: **mshovers**

Wanted: **As time permits**

Companion to LRB:

For: **Administration-Budget 6-1923**

By/Representing: **Quinn**

May Contact:

Drafter: **mshovers**

Subject: **Tax, Individual - dedct/sbtrct**
Econ. Development - misc.

Addl. Drafters: **csundber**

Extra Copies: **JK**

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to:

Pre Topic:

DOA:......Quinn, BB0303 -

Topic:

Capital gains exclusion for Wisconsin-sourced investments

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	mshovers 02/03/2011 csundber 02/08/2011 mshovers 02/08/2011 csundber 02/08/2011	kfollett 02/09/2011		_______ _______ _______ _______ _______ _______ _______ _______			State Tax

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/1	csundber 02/10/2011	kfollett 02/10/2011	jfrantze 02/09/2011	_______ _______	cduerst 02/09/2011		State Tax
/2	csundber 02/15/2011	kfollett 02/15/2011	phenry 02/11/2011	_______ _______	cduerst 02/11/2011		State Tax
/3			rschluet 02/15/2011	_______ _______	lparisi 02/15/2011		State Tax
/4	mshovers 02/18/2011	kfollett 02/18/2011	rschluet 02/18/2011	_______ _______	mbarman 02/18/2011		

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<END>

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/4 NES 2/18/11

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/?	mshovers	1/15 f 2/19	dd 2/19	~~2/9~~ ph/ 8r			

FE Sent For:

<END>

Kreye, Joseph

From: Hanaman, Cathlene
Sent: Wednesday, February 02, 2011 4:37 PM
To: Kreye, Joseph
Subject: FW: Statutory Language Drafting Request
Attachments: Capital Gain Exclusion for WI business (2).doc

From: Scott.Thornton@Wisconsin.gov [mailto:Scott.Thornton@Wisconsin.gov]
Sent: Wednesday, February 02, 2011 4:31 PM
To: Hanaman, Cathlene
Cc: Hetzel, Shayna - DOA; Thornton, Scott - DOA; Grinde, Kirsten - DOA; Quinn, Brian D - DOA
Subject: Statutory Language Drafting Request

Topic: Capital Gains Exclusion for Wisconsin-sourced investments

Tracking Code: BB0303

SBO Team: TTO

SBO Analyst: Quinn, Brian D - DOA
Phone: (608) 266-1923
E-mail: brian.quinn@wisconsin.gov

Agency Acronym: DOR

Agency Number: 566

Priority: Medium

Intent:
See memo.

Attachments: True

Capital Gain Exclusion for Gains Realized from the Sale of Wisconsin-Sourced Assets

- Net gains earned from Wisconsin assets eligible for a 100% exclusion
- Qualifying net gains earned from the sale of real or tangible personal property located in Wisconsin used in a Wisconsin business as well as gain from sale of stock or ownership interest if the stock or ownership interest is of a Wisconsin company, limited liability company or partnership as certified by the Department of Commerce.
- To be eligible, property/ownership interest has to be acquired after January 1, 2011 and owned for at least five uninterrupted years prior to sale.
- Subtraction is the lesser of the federal net capital gain reported on Schedule D or the qualifying Wisconsin net capital gain, i.e., cannot take a 100% exclusion from the Wisconsin gain if non-Wisconsin losses are reported for federal purposes.
- Taxpayers may not take a subtraction for realized gains from transactions that receive a deferral for gains reinvested in a qualified new business venture under s. 71.05(24), Wis. Stats.
- Criteria for Commerce to certify a business as a qualifying Wisconsin business:
    - Require that the business have 50% or more of their property and 50% or more of their payroll in Wisconsin for each year taxpayer held stock or property.
- Effective date of 1-1-2011.

	Tax Treatment	Assets	Holding Period/Limitations	Comments	Tax Expenditure
Colorado	100% Exclusion from Gain Realized	Real or tangible personal property located in CO acquired after May 1994 but before June, 2009	5 years; cannot exceed $100,000	Previous years provided exclusion of gain from stock sales; now limited to sales of CO property	
Idaho	60% Exclusion from Gain Realized	Sale of tangible Idaho property used in production, assembly, distribution, storage, processing, or manufacturing of any agricultural, mineral or manufactured product; also includes operation of labs for scientific, agricultural, industrial R&D or testing	12 months (cattle 24 months, breeding livestock 12 months; timer 24 months)		$47.5 million
Iowa	100% Exclusion from Gain Realized	Sale of Agricultural Property; Real Property in Non-Agricultural Business	10 years; (cattle 24 months; breeding livestock 12 months; timber > 1 year)	Claimant must have materially participated in non-agricultural business either as owner or employee	$40.1 million
Oklahoma	100% Exclusion from Gain Realized	Real or tangible personal property located in OK or stock/ownership interest in OK headquartered company	5 years (real or tangible); 2 years (stocks/ownership interest)	Company must have its primary headquarters in OK for at least 3 years prior to date of sale	$76.7 million
Utah	Reinvested Capital Gain eligible for credit equal to 70% of gross precceds used to buy stock in qualified Utah small business within 12 months of gain	Short or Long term capital gains reinvested	Cannot have prior ownership interest in the Utah small business	No carry forwards	

lu - 2/8

State of Wisconsin
2011 - 2012 LEGISLATURE

LRB-1283/1
MES&CTS...kjf

DOA:......Quinn, BB0303 – Capital gains exclusion for Wisconsin–sourced investments

FOR 2011-13 BUDGET — NOT READY FOR INTRODUCTION

Don't Gen

AN ACT ...; **relating to:** creating a procedure for certain taxpayers to exclude from income certain capital gains from the sale of Wisconsin–sourced assets.

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

Under current law, there is an income tax exclusion for individuals for 30 percent of the net capital gains realized from the sale of assets held for at least one year, except a farm asset is subject to an exclusion for 60 percent of such gains.

Under this bill, and subject to some exceptions, for taxable years beginning after December 31, 2011, an individual; an individual partner or member of a partnership, limited liability company, or limited liability partnership; or an individual shareholder of a tax–option corporation (claimant) may subtract from federal adjusted gross income the lesser of the claimant's federal net capital gain as reported on the claimant's federal tax return if, in that year, the claimant had a qualifying gain, or the claimant's qualifying gain.

15 ~~The bill defines~~ "qualifying gain" as the gain realized by the sale of any Wisconsin capital asset that's purchased after December 31, 2010, held for at least five 5 consecutive years, and treated as a long–term gain under federal law. A "Wisconsin capital asset" is real or tangible personal property that is located in this state and used in a Wisconsin business, or stock or other ownership interest in a Wisconsin

percent

business. Under the bill, the Wisconsin Economic Development Corporation must determine whether a taxpayer's gain resulted from the sale of stock or other ownership interest in, or real or tangible personal property used by, a business that, during a five-year period that the taxpayer held the asset, paid at least 50% of its total payroll to Wisconsin residents, or held real property worth at least 50% of the the value of all its real property and tangible personal property in Wisconsin.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 71.01 (13) of the statutes is amended to read:

71.01 **(13)** "Wisconsin adjusted gross income" means federal adjusted gross income, with the modifications prescribed in s. 71.05 (6) to (12), (19), (20), ~~and~~, (24), and (25).

History: 1987 a. 312; 1987 a. 411 ss. 6 to 8, 26, 27, 31; 1989 a. 31, 100, 336; 1991 a. 39, 269; 1993 a. 16, 112, 437; 1995 a. 27, 380, 428; 1997 a. 27, 37, 237; 1999 a. 9, 194; 2001 a. 109; 2003 a. 33; 2005 a. 25, 49, 362; 2007 a. 20, 226; 2009 a. 2, 28, 161, 183; s. 13.92 (2) (i).

SECTION 2. 71.05 (25) of the statutes is created to read:

71.05 **(25)** CAPITAL GAINS EXCLUSION; WISCONSIN-SOURCE ASSETS. (a) In this subsection:

1. "Claimant" means an individual; an individual partner or member of a partnership, limited liability company, or limited liability partnership; or an individual shareholder of a tax-option corporation.

2. "Qualifying gain" means the gain realized from the sale of any Wisconsin capital asset that is purchased after December 31, 2010, held for at least 5 uninterrupted years, and treated as a long-term gain under the Internal Revenue Code, except that a qualifying gain may not include any amount for which the claimant claimed a subtraction under sub. (24) (b).

3. "Wisconsin business" means a business certified by the Wisconsin Economic Development Corporation under s. 238.145.

4. "Wisconsin capital asset" means any of the following:

a. Real or tangible personal property that is located in this state and used in a Wisconsin business.

b. Stock or other ownership interest in a Wisconsin business.

(b) For taxable years beginning after December 31, 2010, a claimant may subtract from federal adjusted gross income the lesser of one of the following amounts, to the extent that it is not subtracted under sub. (6) (b) 9. or 9m.:

1. The amount of the claimant's federal net capital gain as reported on Schedule D of the claimant's federal income tax return for the taxable year to which the claim relates, but this subdivision applies only if, in that taxable year, the claimant has a qualifying gain.

2. The amount of the claimant's qualifying gain in the year to which the claim relates.

SECTION 3. 238.145 of the statutes is created to read:

238.145 Wisconsin–source assets exclusion. (1) The corporation shall implement a program to certify, for purposes of determining a taxpayer's eligibility to claim the subtract modification under s. 71.05 (25), whether property, as described in s. 71.05 (25) (a) 4. a., was used in a business that, during a period of at least 5 uninterrupted years that the taxpayer held the property, paid at least 50 percent of its total payroll to residents of this state or held real property and tangible personal property in this state with a value equal to at least 50 percent of the value of all of the business's real property and tangible personal property.

(2) The corporation shall implement a program to certify, for purposes of determining a taxpayer's eligibility to claim the subtract modification under s. 71.05 (25), whether stock or other ownership interest, as described in s. 71.05 (25) (a) 4. b., was held in a business that, during a period of at least 5 uninterrupted years that the taxpayer held the held the stock or other ownership interest, paid at least 50 percent of its total payroll to residents of this state or held real property and tangible personal property in this state with a value equal to at least 50 percent of the value of all of the business's real property and tangible personal property.

(END)

Sundberg, Christopher

From: Quinn, Brian D - DOA [Brian.Quinn@wisconsin.gov]

Sent: Thursday, February 10, 2011 11:16 AM

To: Sundberg, Christopher

Subject: FW: BB0303

Chris,

See below. Just to summarize the eligibility so that the intent is clear, we are changing it from having the business have to meet the requirement for every single year of the holding period so that the business only has to meet the requirement for three of the first five years, and the years need not be uninterrupted.

Call me if you have questions.

Brian
266-1923

From: Boldt, Rebecca A - DOR
Sent: Thursday, February 10, 2011 11:12 AM
To: Quinn, Brian D - DOA
Cc: Caruth, Bradley R - DOR; Chandler, Richard G - DOR; Koskinen, John B - DOR
Subject: RE: BB0303

Brian:

As discussed,

1) the draft needs to incorporate the requirement that the payroll AND property factor need to be met.

2) I think it would be cleaner if the holding period requirement (3 years) be specified in Chapter 71 and the certification requirements be in Chapter 238.

In order to be certified in a given year, a business needs to meet the payroll and property test in the business' preceding taxable year. Only after its tax year will the business know if it meets the 50+ test, so we have to reference a preceding year. We could impose the test on the preceding calendar year, but not all companies file on a calendar year basis and they may have difficulty determining it on a calendar year basis.

In order for the taxpayer/investor to get the full exclusion the business is on the certification list in the year of the investment and 2 of the subsequent 4 years.

3) We may want to put in statute more details regarding the payroll and property factors. Here is what I'm thinking for the front end proposal (borrowed from apportionment language):

283.?? Qualified Wisconsin businesses. (1) The corporation shall implement a program to certify qualified Wisconsin businesses for purposes of s. 71.05 (XX). A business desiring certification shall submit an application to the corporation in each calendar year for which the business desires certification. Subject to sub. (2), a business may be certified under this subsection.

(2) The corporation may certify a business under sub. (1) if in the preceding taxable year of the business, the payroll factor of the business is at least 50 percent and the property factor of the business is at least 50 percent.
(a) For purposes of this subsection, payroll factor means the fraction, the numerator of which is the total

amount paid in this state during the preceding taxable year by the business for compensation, as provided in s. 71.04(6), and the denominator of which is the total compensation paid everywhere during the preceding taxable year.
(b) For purposes of this subsection, property factor means the fraction, the numerator of which is the average value of the business' real and tangible personal property owned or rented and used in this state during the preceding taxable year and the denominator of which is the average value of all the business' real and tangible personal property owned or rented and used during the preceding taxable year.
1. Cash on hand or in the bank, shares of stock, notes, bonds, accounts receivable, or other evidence of indebtedness, special privileges, franchises, goodwill, or property the income of which is not taxable or is separately allocated, shall not be considered tangible property nor included in the factor.
2. Property used in the production of nonapportionable income or losses shall be excluded from the numerator and denominator of the property factor. Property used in the production of both apportionable and nonapportionable income or losses shall be partially excluded from the numerator and denominator of the property factor so as to exclude, as near as possible, the portion of such property producing the nonapportionable income or loss.
3. Property owned by the business is valued at its original cost. Property rented by the business is valued at 8 times the net annual rental. Net annual rental is the annual rental paid by the business less any annual rental received by the business from sub-rentals.
4. The average value of property shall be determined by averaging the values at the beginning and ending of the taxable year.

(3) (a) The corporation shall maintain a list of businesses certified under sub. (1) and shall permit public access to the lists through the department's Internet Web site.
(b) The corporation shall notify the department of revenue of every certification issued under sub. (1) and the date on which a certification under sub. (1) is revoked or expires.

Rebecca

Rebecca

From: Quinn, Brian D - DOA
Sent: Wednesday, February 09, 2011 2:58 PM
To: Boldt, Rebecca A - DOR
Cc: Caruth, Bradley R - DOR
Subject: RE: BB0303

Here it is.

From: Boldt, Rebecca A - DOR
Sent: Wednesday, February 09, 2011 10:49 AM
To: Quinn, Brian D - DOA
Subject: RE: BB0303

thank you.

From: Quinn, Brian D - DOA
Sent: Wednesday, February 09, 2011 10:48 AM
To: Boldt, Rebecca A - DOR; Caruth, Bradley R - DOR
Subject: RE: BB0303

I just called Chris Sundberg at LRB and he says that it is in editing right now. We should see it later today.

From: Boldt, Rebecca A - DOR
Sent: Wednesday, February 09, 2011 10:44 AM
To: Caruth, Bradley R - DOR; Quinn, Brian D - DOA
Subject: RE: BB0303

Brian:

Do you have a sense (or could you make an inquiry) as to when we'll see this draft? We would like to see it in conjunction with the (front end) cap gain exclusion and we're getting pressed for time.

Thank you.

Rebecca Boldt
Income Tax Policy and Economic Team
Division of Research and Policy
Wisconsin Department of Revenue
2135 Rimrock Road, 6-73
Madison, WI 53708
(608) 266 -6785

From: Caruth, Bradley R - DOR
Sent: Tuesday, February 08, 2011 2:27 PM
To: Quinn, Brian D - DOA
Cc: Boldt, Rebecca A - DOR
Subject: RE: BB0303

I think you have explained it correctly. I expect certification would require a form in which the business lists the WI and non WI assets and their values. I'm sure there would be some gray areas (for example if the asset is mobile or the value is uncertain during some point in the holding period). Is the question related to whether they need rule making authority in these circumstances?

-Brad
(608) 261-8984

From: Quinn, Brian D - DOA
Sent: Tuesday, February 08, 2011 1:47 PM
To: Caruth, Bradley R - DOR
Subject: FW: BB0303

Brad,

See Christopher's question below and let me know if I was explaining anything incorrectly here. This was based on the version of the capital gains exclusion that was sent to us last week.

Thanks.

-Brian

From: Sundberg, Christopher [mailto:Christopher.Sundberg@legis.wisconsin.gov]
Sent: Tuesday, February 08, 2011 11:17 AM
To: Quinn, Brian D - DOA
Subject: RE: BB0303

That's easy enough where the capital asset in question is stock, but how does it work when the capital asset is real or tangible property used in a Wisconsin business?

From: Quinn, Brian D - DOA [mailto:Brian.Quinn@wisconsin.gov]
Sent: Tuesday, February 08, 2011 11:11 AM
To: Sundberg, Christopher
Subject: RE: BB0303

I should have clarified on this point. The exclusion applies to the investor in the business. The certification applies to the business itself. The person could theoretically be from out of state and earning a return on, say, a commercial office building in Green Bay.

From: Sundberg, Christopher [mailto:Christopher.Sundberg@legis.wisconsin.gov]
Sent: Tuesday, February 08, 2011 11:09 AM
To: Quinn, Brian D - DOA
Subject: RE: BB0303

I think I get it. So the payroll requirement only applies if a person who wants to take advantage of the exclusion actually has employees? Any idea how WEDC is supposed to determine whether 50% of a person's property (also by dollar value, right?) was in Wisconsin during the 5-year period in question?

From: Quinn, Brian D - DOA [mailto:Brian.Quinn@wisconsin.gov]
Sent: Tuesday, February 08, 2011 10:55 AM
To: Sundberg, Christopher
Subject: RE: BB0303

Basically, and this is what I think it means, is that Commerce would have to certify in each year that 50% or more of tangible property (real estate, personalty, etc) and 50% or more of payroll (as defined by dollar amount) be located in Wisconsin. When the investor sells the asset at the end of those five years, in order to qualify for the 100% exclusion, that business must have met those conditions in each of those five years.

From: Sundberg, Christopher [mailto:Christopher.Sundberg@legis.wisconsin.gov]
Sent: Tuesday, February 08, 2011 10:51 AM
To: Quinn, Brian D - DOA
Subject: RE: BB0303

I'm holding up this draft because I'm not sure what it means for Commerce to certify that a business has "50% or more of their property and 50% or more of their payroll in Wisconsin for each year taxpayer held stock or property." Can you help?

From: Quinn, Brian D - DOA [mailto:Brian.Quinn@wisconsin.gov]
Sent: Thursday, February 03, 2011 6:16 PM
To: Sundberg, Christopher
Subject: RE: BB0303

Yes. Thanks.

-Brian

From: Sundberg, Christopher [mailto:Christopher.Sundberg@legis.wisconsin.gov]
Sent: Thursday, February 03, 2011 2:06 PM
To: Quinn, Brian D - DOA
Cc: Shovers, Marc - LEGIS
Subject: BB0303

With Commerce being dismantled, should the certification function in this request be performed by WEDC?

Christopher Sundberg
Legislative Attorney
Legislative Reference Bureau
(608) 266-9739
christopher.sundberg@legis.wi.gov

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Sundberg, Christopher

From: Quinn, Brian D - DOA [Brian.Quinn@wisconsin.gov]
Sent: Thursday, February 10, 2011 11:31 AM
To: Sundberg, Christopher
Subject: FW: BB0303

See below.

From: Boldt, Rebecca A - DOR
Sent: Thursday, February 10, 2011 11:29 AM
To: Quinn, Brian D - DOA
Subject: RE: BB0303

Brian:

Just to be clear - it appears from the draft that Chris may be thinking the WEDC is to certify the qualifying investment. But we have envisioned that they certify the business. They will not be involved in certifying if the business meets the holding requirement for each investor. They will be compiling a list each year of business that qualify in that year (again based on the preceding tax year).

Rebecca

From: Quinn, Brian D - DOA
Sent: Wednesday, February 09, 2011 2:58 PM
To: Boldt, Rebecca A - DOR
Cc: Caruth, Bradley R - DOR
Subject: RE: BB0303

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Subject: RE: BB0303

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Sent: Wednesday, February 09, 2011 10:48 AM
To: Boldt, Rebecca A - DOR; Caruth, Bradley R - DOR
Subject: RE: BB0303

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Sent: Wednesday, February 09, 2011 10:44 AM

tns 2/10/11

State of Wisconsin
2011 - 2012 LEGISLATURE

LRB-1283/~~1~~ 2
MES&CTS:kjf:jf Frank

DOA:......Quinn, BB0303 - Capital gains exclusion for Wisconsin-sourced investments

FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION

Don't Gen

AN ACT ...; **relating to:** creating a procedure for certain taxpayers to exclude from income certain capital gains from the sale of Wisconsin-sourced assets.

Analysis by the Legislative Reference Bureau

TAXATION

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INS A

Wisconsin business. Under the bill, the Wisconsin Economic Development Corporation must determine whether a taxpayer's gain resulted from the sale of stock or other ownership interest in, or real or tangible personal property used by, a business that, during a five-year period that the taxpayer held the asset, paid at least 50 percent of its total payroll to Wisconsin residents, or held real property worth at least 50 percent of the value of all its real property and tangible personal property in Wisconsin.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 71.01 (13) of the statutes is amended to read:

71.01 **(13)** "Wisconsin adjusted gross income" means federal adjusted gross income, with the modifications prescribed in s. 71.05 (6) to (12), (19), (20), ~~and~~ (24), and (25).

SECTION 2. 71.05 (25) of the statutes is created to read:

71.05 **(25)** CAPITAL GAINS EXCLUSION; WISCONSIN-SOURCE ASSETS. (a) In this subsection:

1. "Claimant" means an individual; an individual partner or member of a partnership, limited liability company, or limited liability partnership; or an individual shareholder of a tax-option corporation.

2. "Qualifying gain" means the gain realized from the sale of any Wisconsin capital asset that is purchased after December 31, 2010, held for at least 5 uninterrupted years, and treated as a long-term gain under the Internal Revenue Code, except that a qualifying gain may not include any amount for which the claimant claimed a subtraction under sub. (24) (b).

3. "Wisconsin business" means a business certified by the Wisconsin Economic Development Corporation under s. 238.145.

4. "Wisconsin capital asset" means any of the following:

a. Real or tangible personal property that is located in this state and used in a Wisconsin business.

b. Stock or other ownership interest in a Wisconsin business.

(b) For taxable years beginning after December 31, 2010, a claimant may subtract from federal adjusted gross income the lesser of one of the following amounts, to the extent that it is not subtracted under sub. (6) (b) 9. or 9m.:

INS 3-16

1. The amount of the claimant's federal net capital gain as reported on Schedule D of the claimant's federal income tax return for the taxable year to which the claim relates, but this subdivision applies only if, in that taxable year, the claimant has a qualifying gain.

2. The amount of the claimant's qualifying gain in the year to which the claim relates.

SECTION 3. 238.145 of the statutes is created to read:

238.145 Wisconsin-source assets exclusion. **(1)** The corporation shall implement a program to certify, for purposes of determining a taxpayer's eligibility to claim the subtract modification under s. 71.05 (25), whether property, as described in s. 71.05 (25) (a) 4. a., was used in a business that, during a period of at least 5 uninterrupted years that the taxpayer held the property, paid at least 50 percent of its total payroll to residents of this state or held real property and tangible personal property in this state with a value equal to at least 50 percent of the value of all of the business's real property and tangible personal property.

(2) The corporation shall implement a program to certify, for purposes of determining a taxpayer's eligibility to claim the subtract modification under s. 71.05 (25), whether stock or other ownership interest, as described in s. 71.05 (25) (a) 4. b., was held in a business that, during a period of at least 5 uninterrupted years that the taxpayer held the held the stock or other ownership interest, paid at least 50 percent of its total payroll to residents of this state or held real property and tangible personal property in this state with a value equal to at least 50 percent of the value of all of the business's real property and tangible personal property.

(END)

percent

Insert A:

a business may apply to the Wisconsin Economic Development Corporation (corporation) for annual certification. The corporation may certify a business if it determines that, in the taxable year ending immediately before the date of the business's application, at least 50% of the business's payroll is paid in in Wisconsin and at least 50% of the value of the business's real and tangible personal property is used by the business in this state. The bill permits the corporation to adopt rules in consultation with the Department of Revenue. DOR

Insert 3-16:

(B)

238.144 Wisconsin-source assets exclusion; business certification. (1) The corporation shall implement a program to certify businesses for purposes of s. 71.05 (25). A business shall submit an application to the corporation in each calendar year for which the business desires certification.

(2) The corporation may certify a business if, in the business's taxable year ending immediately before the date of the business's application, all of the following are true:

(a) The amount of payroll compensation paid by the business in this state, as determined by the corporation, is equal to at least 50 percent of the amount of all payroll compensation paid by the business, as determined by the corporation.

(b) The value of real and tangible personal property owned or rented and used by the business in this state, as determined by the corporation, is equal to at least 50 percent of the value of all real and tangible personal property owned or rented and used by the business, as determined by the corporation.

(3) The corporation shall notify the department of revenue of every certification issued under this section and of the date on which a certification is revoked or expires.

(4) The corporation, in consultation with the department of revenue, may adopt rules for the administration of this section.

Shovers, Marc

From: Boldt, Rebecca A - DOR [Rebecca.Boldt@revenue.wi.gov]
Sent: Monday, February 14, 2011 4:03 PM
To: Shovers, Marc
Subject: FW: Capital Gains Exclusion Draft
Attachments: 11-12832.pdf

From: Boldt, Rebecca A - DOR
Sent: Monday, February 14, 2011 4:02 PM
To: Shovers, Marc - LEGIS; Sundberg, Christopher - LEGIS
Cc: Quinn, Brian D - DOA
Subject: FW: Capital Gains Exclusion Draft

Marc and Chris:

Brian asked that I communicate with you regarding DOR comments on the bill:

1. Page 2, Section 2: Qualifying gain requires a minimum of a 5 year holding period AND that the asset is a Wisconsin capital asset in the year of the purchase and in two of the subsequent four years. (in other words, the business has to be certified as a WI business for 3 years that the investor holds the asset)

2. Page 3, line 7: s. 71.05(25)(b) intro should read as amended as follows:

(b) For taxable years beginning after December 31, ~~2010~~ 2015, for a Wisconsin capital asset purchased after December 31, 2010 and held for five years, a claimant may subtract from federal adjusted gross income the lesser of one of the following amounts, to the extent that it is not subtracted under sub.(6)(b)9. or 9m.:

3. Include in the draft an amendment to s. 71.05(8)(b) to read as follows:

(b) A Wisconsin net operating loss may be carried forward against Wisconsin taxable incomes of the next 15 taxable years, if the taxpayer was subject to taxation under this chapter in the taxable year in which the loss was sustained, to the extent not offset against other income of the year of loss and to the extent not offset against Wisconsin modified taxable income of any year between the loss year and the taxable year for which the loss carry-forward is claimed. In this paragraph, "Wisconsin modified taxable income" means Wisconsin taxable income with the following exceptions: a net operating loss deduction or offset for the loss year or any taxable year thereafter is not allowed, the deduction for long-term capital gains under sub.(6)(b)9. and 9m. and sub. (25) is not allowed, the amount deductible for losses from sales or exchanges of capital assets may not exceed the amount includable in income for gains from sales or exchanges of capital assets and "Wisconsin modified taxable income" may not be less than zero.

4. Specify in law that the WEDC shall publish the list of certified businesses (so that taxpayers can easily determine if they meet the 3 of 5 year test).

Please note: DOR will probably have the same issue described in #3 regarding the front end cap gain exclusion submitted last week, i.e., s. 71.05(8)(b) should be amended to include the cross reference to that cap gain exclusion as well.

Please let me know if I can clarify anything.

Rebecca Boldt
Income Tax Policy and Economic Team
Division of Research and Policy
Wisconsin Department of Revenue
2135 Rimrock Road, 6-73
Madison, WI 53708
(608) 266 -6785

From: Quinn, Brian D - DOA
Sent: Monday, February 14, 2011 9:58 AM
To: Boldt, Rebecca A - DOR
Subject: FW: Capital Gains Exclusion Draft

Rebecca,

In case this has not made its way to you. I may be missing something obvious, but as far as I can tell the three out of the first five years test was not included in this draft.

Let me know what suggestions you have.

Thanks.

-Brian

From: Quinn, Brian D - DOA
Sent: Friday, February 11, 2011 1:45 PM
To: Koskinen, John B - DOR; Grinde, Kirsten - DOA
Subject: Capital Gains Exclusion Draft

Brian Quinn
Executive Policy & Budget Analyst
Department of Administration
Division of Executive Budget and Finance
(608)-266-1923
brian.quinn@wisconsin.gov

State of Wisconsin
2011 - 2012 LEGISLATURE

LRB-1283/2
MES&CTS:kjf:ph

nmur

DOA:......Quinn, BB0303 – Capital gains exclusion for Wisconsin-sourced investments

FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION

Don't Gen

AN ACT ...; **relating to:** creating a procedure for certain taxpayers to exclude from income certain capital gains from the sale of Wisconsin-sourced assets.

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TAXATION

INCOME TAXATION

Under current law, there is an income tax exclusion for individuals for 30 percent of the net capital gains realized from the sale of assets held for at least one year, except a farm asset is subject to an exclusion for 60 percent of such gains.

Under this bill, and subject to some exceptions, for taxable years beginning after December 31, ~~2011~~ 2015, an individual; an individual partner or member of a partnership, limited liability company, or limited liability partnership; or an individual shareholder of a tax-option corporation (claimant) may subtract from federal adjusted gross income the lesser of the claimant's federal net capital gain as reported on the claimant's federal tax return if, in that year, the claimant had a qualifying gain, or the claimant's qualifying gain.

The bill defines "qualifying gain" as the gain realized by the sale of any ~~Wisconsin capital~~ asset that is purchased after December 31, 2010, held for at least five consecutive years, is a Wisconsin capital asset at the time of purchase and for at least 2 (two) of the next 4 (four) years, and treated as a long-term gain under federal law. A "Wisconsin capital asset" is real or tangible personal property that is located in this state and used in a Wisconsin business, or stock or other ownership interest in a

Wisconsin business. Under the bill, a business may apply to the Wisconsin Economic Development Corporation (corporation) for annual certification. The corporation may certify a business if it determines that, in the taxable year ending immediately before the date of the business's application, at least 50 percent of the business's payroll is paid in Wisconsin and at least 50 percent of the value of the business's real and tangible personal property is used by the business in this state. The bill permits the corporation to adopt rules in consultation with DOR.

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, and it requires the corporation to make a list of certified businesses available at the corporation's Web site

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FN 2-4

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for

in the year it is purchased by the claimant and for at least 2 of the subsequent 4 years;

2015, for a Wisconsin capital asset that is purchased after December 31, 2010, and held for at least 5 years

3. "Wisconsin business" means a business certified by the Wisconsin Economic Development Corporation under s. 238.145.

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✓

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(4) The corporation, in consultation with the department of revenue, may adopt rules for the administration of this section.

(END)

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INS 2-4

Section #. 71.05 (8) (b) of the statutes is amended to read:

71.05 **(8)** (b) A Wisconsin net operating loss may be carried forward against Wisconsin taxable incomes of the next 15 taxable years, if the taxpayer was subject to taxation under this chapter in the taxable year in which the loss was sustained, to the extent not offset against other income of the year of loss and to the extent not offset against Wisconsin modified taxable income of any year between the loss year and the taxable year for which the loss carry–forward is claimed. In this paragraph, "Wisconsin modified taxable income" means Wisconsin taxable income with the following exceptions: a net operating loss deduction or offset for the loss year or any taxable year thereafter is not allowed, the deduction for long–term capital gains under ~~sub.~~ subs. (6) (b) 9. and 9m. and (25) is not allowed, the amount deductible for losses from sales or exchanges of capital assets may not exceed the amount includable in income for gains from sales or exchanges of capital assets and "Wisconsin modified taxable income" may not be less than zero.

History: 1987 a. 312; 1987 a. 411 ss. 42, 43, 45, 47 to 49, 51 to 53; 1989 a. 31, 46; 1991 a. 2, 37, 39, 269; 1993 a. 16, 112, 204, 263, 437; 1995 a. 27, 56, 209, 227, 261, 371, 403, 453; 1997 a. 27, 35, 39, 237; 1999 a. 9, 32, 44, 54, 65, 167; 2001 a. 16, 104, 105, 109; 2003 a. 85, 99, 119, 135, 183, 255, 289, 321, 326; 2005 a. 22, 25, 216, 254, 335, 361, 479, 483; 2007 a. 20, 96, 226; 2009 a. 2, 28, 205, 265, 269, 276, 295, 332, 344; s. 13.92 (1) (bm) 2., (2) (i).

State of Wisconsin
2011 - 2012 LEGISLATURE

LRB-1283/8
MES&CTS:kjf:rs

fmr

DOA:......Quinn, BB0303 - Capital gains exclusion for Wisconsin-sourced investments

FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION

D-NOTE

Don't Gen

AN ACT ...; ~~relating~~ **to:** creating a procedure for certain taxpayers to exclude from income certain capital gains from the sale of Wisconsin-sourced assets.

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The bill defines "qualifying gain" as the gain realized by the sale of any asset that is purchased after December 31, 2010, held for at least five consecutive years, is a Wisconsin capital asset at the time of purchase and for at least two of the next four years, and treated as a long-term gain under federal law. A "Wisconsin capital asset" is real or tangible personal property that is located in this state and used in a Wisconsin business, or stock or other ownership interest in a Wisconsin business. Under the bill, a business may apply to the Wisconsin Economic Development Corporation (corporation) for annual certification. The corporation may certify a business if it determines that, in the taxable year ending immediately before the date of the business's application, at least 50 percent of the business's payroll is paid in Wisconsin and at least 50 percent of the value of the business's real and tangible personal property is used by the business in this state. The bill permits the corporation to adopt rules in consultation with DOR, and it requires the corporation to make a list of certified businesses available at the corporation's Web site.

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**** NOTE. This is reconciled s. 71.01 (13). LRB-1283/3 and LRB-1409/P1.

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(END)

D-NOTE Date LRB-1283/4dn
MES:kjf

This draft reconciles LRB-1283/3 and -1409/P1. Both drafts should continue to appear in the compiled bill.

MES

Drafter's Note
from the
Legislative Reference Bureau

LRB-1283/4dn
MES:kjf:rs

February 18, 2011

This draft reconciles LRB-1283/3 and -1409/P1. Both drafts should continue to appear in the compiled bill.

Marc E. Shovers
Managing Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.wisconsin.gov

State of Wisconsin
2011 - 2012 LEGISLATURE

LRB-1283/4
MES&CTS:kjf:rs

DOA:......Quinn, BB0303 - Capital gains exclusion for Wisconsin-sourced investments

FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION

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